

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1903 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PROJECT TECHNOLOGISTS PVT LTD.

Versus

PC BHARGAVA  
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Appearance:

M/S TRIVEDI & GUPTA for Petitioners  
MR JD AJMERA for Respondent No. 1  
NANAVATI ASSOCIATES for Respondent No. 3  
SERVED BY DS for Respondent No. 4  
  
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CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 20/10/97

ORAL JUDGEMENT

Heard Mr Thakar for the petitioner. This petition came to up earlier on 17th March 1997 before another judge (Calla, J.) when a notice was issued to the respondents. The matter has been pending since then. It is a matter concerning the provisions of the Minimum Wages Act, 1948. It is desirable that it be disposed of at the earliest. Hence, RULE. The same is made returnable forthwith. Mr J.D. Ajmera waives service of Rule on behalf of respondents nos.1 and 2 and Mr V.M. Patel waives service of Rule on behalf respondents nos.3 to 7. Mr Patel has already filed an affidavit-in-reply on behalf of respondent no.3.

2 The facts leading to this controversy are as follows:- The first petitioner is a private limited company engaged in execution of civil engineering contracts. The second petitioner is its Managing Director. The first petitioner at the relevant time was laying down pipeline for respondent no.3 i.e. Indian Oil Corporation Limited. Respondents nos.4 to 7 are the officers of respondent no.3. Respondent no.2 is the Labour Enforcement Officer (Central) whereas respondent no.1 is the Regional Labour Officer (Central) and he is also an authority under the Minimum Wages Act, 1948. As stated above, the petitioner was executing certain works for respondent no.3 during 7.7.1993 till the end of December 1984 at Viramgam, District Ahmedabad. The minimum rate of wages payable for each month to the workers was Rs.30 per day up to the end of November 1994. In December 1994 it came to be revised to Rs.38.80. Respondent no.2 happened to visit the work site of the petitioners on 8th December 1994 and informed them about the above referred revision. On 19th December 1994 he sent them a notice informing them that for the 92 workmen engaged in that project the difference in the amount payable had been worked out to Rs.196.80 per person for 24 actual days of working for the month of December 1994. The amount in all came to Rs.18,105.60. It is relevant to note in this connection that the petitioner was having a valid licence under the Contract Labour (Abolition & Regulation) Act, 1970, for 92 workmen.

3 It is the case of the petitioner that as per the said notice they paid the amount by withdrawing an equal amount on 31.12.1994. They wrote a letter to respondent no.2 on 31.12.1994 which in paragraph no.3 reads as under:-

"The difference in minimum wages as shown in the statement given by you, we are arranging to make payment of difference in wages immediately and

the documents will be produced to you for your verification."

4 It is the case of the petitioner that in spite of the payment made by them, respondent no.2 filed an application under section 20(2) of the aforesaid Act on 1.6.1995. The petitioner filed their reply. They also wrote a letter on 7.8.1995 to the Minimum Wages Authority recording that they had paid the difference to the workmen. In that letter they referred to their above earlier letter dated 31st December 1994. They enclosed a copy of the wage sheet for the reference of the authority. The petitioner examined two witnesses: one Mr Gautam Charkravarti, the Resident Engineer and Mr B. Jankiraman, Senior Maintenance Manager of Indian Oil Corporation. After considering this evidence, the relevant authority came to the conclusion that the petitioner had not made the necessary payment in spite of the notice. The authority therefore proceeded to pass an order directing the petitioners to deposit an amount of Rs.18,105.60 with the authority. The authority also awarded a compensation to the extent of three times of the claim being Rs.54,316.80. The amount towards the claim and the compensation came to Rs.72,422.40. The authority directed the petitioners to deposit Rs.72,422 with the Assistant Labour Commissioner, Ahmedabad. Being aggrieved by that order dated 27th November 1996, this petition has been filed.

5 Mr Thakar, learned advocate appearing for the petitioners, has submitted that the learned authority had erred in coming to the conclusion that the petitioners had not made the payment. He submitted that on receiving the notice the petitioners had withdrawn the necessary amount on 31st December 1994. That debit voucher is produced at Annexure-F to the petition. The copy of the payment sheet indicating payments to 92 workmen is produced at Annexure-G to the petition and the letter written to respondent no.2 dated 31.12.1994 is annexed at Annexure-E to the petition. Mr Thakar therefore submitted that this showed the conduct of the petitioner which was quite clear in this behalf.

6 Mr Ajmera, the learned advocate appearing for the respondents nos.1 and 2, submitted that the authority had to draw its inference on the basis of the material before it. The payment sheet does not contain the signature of the disbursing officer. None of the workmen have been examined to say that he or she has received the payment. The payment sheet does not even bear the name of the establishment of the petitioner. Mr Ajmera submits that

all these factors were rightly considered by the learned authority. The authority also discussed the oral evidence led before it. Whereas Mr Chakravarti has stated that the payments were made before him, he had also stated that he was engaged on the site from 17.6.1993 to 26.12.1994. The authority therefore has not accepted the evidence. The second witness examined was the officer of the Indian Oil Corporation. The only thing he stated was that no workers of the petitioners had approached him for any due. The petitioners have also contended in the present petition that the payment was made in the presence of an officer of Indian Oil Corporation, namely, one Mr Balasuri whom they have joined as respondent no.6. One Mr A.B. Shaury has filed an affidavit on behalf of the Indian Oil Corporation. Mr Patel appearing for IOC states that the name of the concerned officer is Mr A.B.Shaury and not that of Mr Balasuri, as claimed by the petitioner. Mr A.B.Shaury has stated that he was not present when the concerned payment was made. Thus, there is no independent witness to the payment made. Mr Ajmera therefore submitted that on these facts the finding of the authority that the payment had not been made could not be faulted.

7 I have considered the submissions made by both the learned advocates. Mr Thakar presses the probability of the situation and states that the entire conduct of the petitioner shows that they have in fact made the payment. Mr Ajmera on the other hand states that unless either the workmen are examined or some independent person is examined, the payment sheets which contain all but 21 thumb impressions could not be accepted as valid proof of payment. Mr Ajmera also relies upon a judgement of the single judge of Andhra Pradesh High Court in the case of T. Sreeramamurthy v. Authority under M.W. Act, 1948, Guntur, reported in 1989 Lab.IC 522. In that judgement a single judge of the Andhra Pradesh High Court has held as follows:-

"Where employer claims to have paid wages to workmen through cheques, it is entirely for him to produce the alleged recipients of the monies to establish his case and lead necessary evidence in support of the contention that amounts are paid. Labour authorities are under no obligation to unilaterally enquire into the matter unless the employer requires them to make an enquiry and adduce appropriate evidence."

8 In my view, the submission of Mr Ajmera is well founded. In view of absence of any direct evidence in a

case where large number of illiterate workmen are involved, the authority could not have drawn a conclusion based on probabilities in favour of the petitioners. The absence of even the name of the petitioners on the payment sheets, the absence of signature of any of their officers thereon, the absence of any independent witness and serious discrepancy in the deposition of their own witness are factors which are taken into consideration by the learned Minimum Wages Authority and the authority cannot be faulted for that. It cannot therefore be held that the authority has erred in coming to the conclusion that the payments had not been made as required.

9 The next question raised by Mr Thakar is that the authority ought not to have imposed an additional compensation to pay three times of the claim amount which comes to Rs.54,316.80. It is true that section 20(3) sub-clause (i) empowers the Minimum Wages Authority to direct payment of compensation not exceeding 10 times of the amount involved. Mr Thakar however submits that this discretion has to be rationally exercised. Since this award of compensation is a kind of penal provision, it has to be seen as to whether it is a wilful default and as to whether it was a case to exploit the labourers by resorting to short payments or under-payments. He relied upon two judgements of the Andhra Pradesh High Court reported in (i) 1986(1) LLJ page 355 and (ii) 1988 LIC page 1597. In the first case, namely, in the case of Andhra Pradesh State Handloom Weavers Society v. Authority under the Minimum Wages Act, Warangal, reported in 1986(I) LLJ page 355 the Honourable Court has observed in paragraph 11 as follows:-

"11. .... It cannot be denied that S.20(3) of the Act vests a discretion in the Authority to direct the payment of compensation, and in deserving cases, it can be equal to ten times of the wages. The exercise of the discretion is not left to the caprice of the Authority. It must be exercised judiciously and reasonably. If the facts of a given case show that the Authority did not exercise the discretion judiciously, this Court is entitled to interfere with the exercise of discretion. .... "

10 In that case the learned Judge has interfered with the award of compensation equal to five times the difference which was held to be uncalled for in the circumstances of the case. In the second case, namely, in the case of Rajesh Kumar v. Authority under the M.W. Act reported in 1988 Lab.IC 1597 the petitioner was under

a mistaken impression that there was a stay of the Court. That resulted into a breach. In that case in paragraph 8 the learned Judge observed as follows:-

".... This is not a case of an employer who tried to exploit the labour by resorting to short payment or under payment of minimum wages. .... If there is any breach it is definitely a venial breach which does not call for the levy of compensation under S. 20(3) of the Act which is penal in character. .... "

11 As against those two judgements, Mr Ajmera pressed into service earlier referred to judgement (1989 Lab.IC 522) wherein levy of compensation equal to twice the amount of difference amount was held to be valid. But the facts of that case were different. In paragraph 11 of that judgement, the learned Judge has observed as under:-

"11. .... The writ petitioner is undoubtedly guilty of exploiting the unorganised illiterate workmen for his own benefit. What is most distressing in this case is that even after the petitioner was caught in the act of not paying to the labour the minimum wages he tried to circumvent the law by creating a device of payment by bank manipulations. ... ...."

In the facts of the present case, there is no dispute that until the end of November 1994 the petitioner had paid the wages according to the minimum wages. The minimum wages came to be revised in December 1994. It was during that month itself i.e. on 8.12.1994 that the petitioners were informed accordingly and they were given the notice on 19.12.1994. The defence of the petitioners is that in fact they have made the payment but for the reasons stated above the Minimum Wages Authority could not accept the defence and held that there was a short payment. This cannot be said to be a case where the employer is attempting to exploit the illiterate workmen for his benefit by making under payments or consciously avoiding it. At the highest, as stated earlier, if there is any breach, it is a venial breach which does not call for the levy of compensation. In the circumstances, the award of compensation will have to be interfered.

12 The third submission of Mr Thakar was that the learned authority could not have directed the petitioners

to deposit the amount with the Assistant Labour Commissioner. Section 20(3) of the Act directs the payment of the wages to the employees and that there is no provision for deposit. In view of this submission of Mr Thakar, he was asked as to whether the petitioners have the addresses of the employees concerned. Mr Thakar submitted that they would be available in the office of the petitioners. The number of workmen involved is 92 and their addresses are not entered anywhere in this petition. In these circumstances, there is no option but to maintain the direction to deposit the amount with the Asst. Commissioner of Labour (Central).

13 In the circumstances, Rule is made absolute and the impugned order is interfered to the extent that it directs the petitioners to pay the compensation at three times of the claim amount. The part of the order which holds that the difference in minimum wages was not paid and which directs the petitioners to deposit the amount of Rs.18,105.60 with the Assistant Commissioner of Labour (Central) is confirmed. The petitioners have not deposited that amount so far. They shall deposit the same on or before 20th November 1997. They are also directed to send specific intimations by letters in Gujarati language to the 92 workmen at their addresses available with them to collect the particular amount from the office of the Assistant Labour Commissioner (Central), Ahmedabad. They shall send these intimations under postal certificate and file those certificates along with the copies of the letters in the office of the Asst. Labour Commissioner (Central), Ahmedabad, before the end of November 1997. As and when the workmen approach the said office to claim their respective amounts with the letter the Asst. Labour Commissioner (Central) will release the same in cash without any delay by obtaining due receipts. The Asst. Labour Commissioner (Central) Ahmedabad will file a report in this Court by the end of January 1997 to place on record the status report with respect to the disbursement of these amounts. Liberty to apply in the event of any difficulty. There will no order as to costs.

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